

No. 10314

United States
Circuit Court of Appeals
For the Ninth Circuit. 9

AL PIANTADOSI,

Appellant,

vs.

LOEW'S INCORPORATED, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

DEC 15 1942

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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Los Angeles, California.

For Appellee:

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Los Angeles, California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, Southern District of California, Central Division

No. 2027-O'C—Civil

AL PIANTADOSI,

Plaintiff,

vs.

LOEWS' INCORPORATED, a corporation,
METRO-GOLDWYN-MAYER CORPORATION, a corporation, LEO FEIST, INC., a corporation,

Defendants.

FIRST AMENDED COMPLAINT COPYRIGHT INFRINGEMENT

By leave of Court the plaintiff herein files this, his First Amended Complaint and for cause of action against the defendants, complains and alleges:

I.

That plaintiff is a citizen of the State of California. That defendant Leo Feist, Inc. is a corporation incorporated under the laws of the State of New York; that defendant Loews' Incorporated is a corporation under the laws of the State of Delaware, and defendant Metro-Goldwyn-Mayer Corporation is a corporation under the laws of the State of New York.

That this action arises under the Copyright Act approved March 4, 1909, as hereinafter more fully appears.

II.

That prior to May 16, 1912, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote the music of an original musical composition entitled, "That's How I Need You".

III.

That the music of this musical composition is wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

[2]

IV.

That prior to May 16, 1912, plaintiff complied in all respects with the Copyright Act of March 4, 1909, and all other laws governing copyrights, and secured, jointly with his co-authors, the exclusive rights and privileges in and to the copyright of said musical composition, and received from the Register of Copyrights a certificate of registration.

That said copyright was duly renewed by plaintiff by application filed with the Register of Copyrights on June 1, 1939, on which a certificate of the renewal of said copyright was duly issued to plaintiff by the Register of Copyrights identified as follows: "Renewal Registration No. 75877".

V.

Since June 1, 1939, plaintiff has been and still is the sole proprietor, jointly with his co-authors, of all rights, title and interest in and to the copyright in said musical composition.

VI.

That since May 16, 1912, said musical composition has been published by plaintiff and all copies of it made by plaintiff or under his authority have been printed and published in strict conformity with the provisions of the Copyright Act of March 4, 1909, and all other laws governing copyright.

VII.

That about June 1, 1941, defendants infringed said copyright by using said musical composition and publicly performing the same in a motion picture named, "Barnacle Bill" in which Wallace Beery is portrayed in the singing of said musical composition. That said defendants have repeated the said infringement on at least one hundred forty thousand occasions by repeated exhibitions of said motion picture, each exhibition being a separate infringement.

That plaintiff asserts a separate cause of action for each such infringement and said separate causes of action are joined for the sake of convenience because the convenient administration of justice will be promoted by such joinder, and a multiplicity of separate actions against the defendants arising on similar sets of facts will be avoided. [3]

VIII.

That at no time has plaintiff, or his co-owners, or any of them, licensed or permitted the defendants, to use said musical composition in the making of said motion picture.

IX.

That plaintiff has notified defendants Loews' Incorporated and Metro-Goldwyn-Mayer Corporation that defendants have infringed the copyright of plaintiff, and said defendants have continued to infringe the copyright.

X.

That defendant Leo Feist, Inc. has purported to license defendant Loews' Incorporated to use said musical composition which license is without right.

For a Further, Separate and Distinct Cause of Action Against Defendant Leo Feist, Inc., Plaintiff Alleges:

I.

That defendant Leo Feist, Inc. is a corporation incorporated under the laws of the State of New York.

II.

That plaintiff is the sole proprietor, jointly with his co-authors, of all rights, title and interest in and to the copyright of the following named musical compositions, to-wit:

Name of Song	Entry No.	Renewal No.
When She Gets Back I'm Going Away	Exxc 215193	54986
Ski-da-me-rink-a doo (Means I Love You)		
That Italian Rag (Piano)		
Dreamy Italian Waltz	Exxc 251629	70705
I'd Still Believe in You	Exxc 323893	93679
Way Down in Cotton Town	Exxc 219566	54984
Be Jolly, Molly	Exxc 219579	54982
I'm Glad I'm Irish	Exxc 219570	60696
The Vampire	Exxc 223569	60697

Name of Song	Entry No.	Renewal No.
The King of the Wide Wide World		[4]
Let Georgia Do It	Exxc 225213	60699
That Italian Rag	Exxc 223871	60698
Fido Simply Said "Bow Wow"	Exxc 238600	67263
Wops, My Dear	Exxc 275995	75387
Funny Moon	Exxc 238605	67267
In All My Dreams I Dream of You	Exxc 238609	67269
San Francisco Glide	Exxc 238603	67265
That Dreamy Italian Waltz	Exxc 238602	67264
That Toledo Tune	Exxc 246186	70921
Mother's Child	Exxc 257767	70708
" "	Exxc 246185	70920
When Broadway Was a Pasture	Exxc 250104	70703
That Long Lost Chord	Exxc 251632	70706
Summer Days	Exxc 257771	70709
" "	Exxc 254584	70707
Honey Man, My Little Lovin' Honey		
Man	Exxc 261634	70710
Give Me a Small Town Sweetheart	Exxc 262882	74349
I Just Met the Fellow That Married the		
Girl That I Was Going to Get	Exxc 262883	74350
Somehow I Can't Forget You	Exxc 865522	74352
Love Is a Peculiarity	Exxc 284500	75876
Whose Going to Do Your Lovin' When		
I'm Gone	Exxc 279241	75390
I've Loved You Since You Were a Baby	E 348554	
I'm Looking for Antone		
I'm Sending a Message to Mama	Exxc 278466	75389
I Didn't Mean to Make You Cry	Exxc 219572	54983
Not Me	Exxc 219581	54985
Take Me With You Cutie and Forget		
to Bring Me Back	Exxc 238606	67268
Think It Over, Mary	Exxc 240497	65037
Take Me With You Into Loveland	Exxc 238604	67266
I Didn't Raise My Boy to Be a Soldier		
		[5]
Haven't You Forgotten Something,		
Dearie	Exxc 250099	70702
When You Play in the Game of Love	Exxc 323704	94562
" " " " " " " "	Exxc 310251	87456

Name of Song	Entry No.	Renewal No.
As I Have Forgiven You		
When You're in Love With Someone		
Who Is Not in Love With You		
I'm Looking for a Dear Old Lady		
You're Going to Wish You Had Me		
Back	Exxc 250105	70704
It's the Wonderful Way He Loves	Exxc 311524	88568
As Deep as the Ocean Is Blue	Exxc 314296	87823
You Look Just Like Your Mother, Mary	Exxc 321723	93678
I'm So Tired of Dreaming	Exxc 262884	74351
Skid-dy-mer-rink-adink	Exxc 228987	55898
Love Isn't Always Laughter	Exxc 269565	74354
Whose Loving Darling Are You	Exxc 279981	75391
Your Daddy Did the Same Thing		
Fifty Years Ago	Exxc 282606	75875
That's How I Need You	Exxc 284725	75877
When I Marry the One I Love	Exxc 298762	84468
Any Boy Could Love a Girl Like You	Exxc 304342	86865
Then I'll Stop Loving You	Exxc 304582	86866
Melinda's Wedding Day	Exxc 308062	86098
“ “ “	Exxc 300836	86862
Cute and Cunning Wonderful Baby Doll	Exxc 308061	85217
I Want My Man	Exxc 292180	77634
Oo-Ga-Lee-Oo-Ga-Lee-Oo	Exxc 305274	86717
Where Was Moses When the Light		
Went Out	Exxc 309846	88567
The Million Dollar Gambler From		
the West	Exxc 314297	87824
Rusty-Can-O-Rag	Exxc 238611	67270
That Italian Serenade	Exxc 269264	74353
Rafferty's Chimes	Exxc 329007	97475
“ “ “	Exxc 329726	97099
When the Roses Fade Away		
		[6]
Firefly (My Pretty Firefly)		
I've Only One Idea About the Boys		
I've Only One Idea About the Girls	E 343757	
“ “ “ “ “ “ “	E 347572	
At the Yiddisha Wedding Jubilee	E 343756	
My Own Venetian Rose		

Name of Song	Entry No.	Renewal No.
On the Shores of Italy	E 339728	
" " " " "	E 343339	
" " " " "	Exxc 329973	97086
Darkies Serenade		
Venetian Rose (Inst)		
The Curse of an Aching Heart	Exxc 308049	85216
" " " " " "	Exxc 314785	87880
" " " " " "	Exxc 305286	86718
I'd Let You Do It All Over Again		
You Can Always Count on Me		
Mother's Apron Strings		
I Wonder Why No One's in Love With Me		
(Original Entitled All the World's		
in Love With Someone)		
With a Smile on My Face and a Tear		
in My Heart		
Ain't I Got You—Ain't I Got You		
One Word of Consolation		
After the Dance		
People Like Us		
What Will Become of Me		
I've Lost All My Love for You		
(Originally Entitled "You Killed		
All My Love for You")		
Mother, I Didn't Understand		
Pal of My Cradle Days		
Rose of the Evening		

[7]

II.

That defendant Leo Feist, Inc. claims to own the copyright on said musical compositions and has, without right, obtained a renewal of the copyright on some of the said compositions.

Wherefore, plaintiff demands:

(1) That defendants, their agents and servants be permanently enjoined from infringing said copyrights of said plaintiff in any manner.

(2) That defendants be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendants' infringement of said copyrights and to account and pay over to plaintiff all the gains, profits, and advantages derived by defendants and all of them, from their infringement of plaintiff's copyrights, or such damages as to the Court shall appear proper within the provisions of the copyright statutes, but not less than Two Hundred and Fifty Dollars (\$250.00) for each of the first Ten (10) infringements, and not less than Ten Dollars (\$10.00) for each subsequent infringement and aggregating the sum of One Million four-hundred thousand dollars (\$1,400,000.00).

(3) That it be decreed that defendant Leo Feist, Inc. is not the owner of any interest in any of the copyrights on any of the musical compositions listed in Paragraph I of the second cause of action herein and that said defendant be required to convey and transfer to this plaintiff all rights which it may have obtained by reason of any Renewal or Copyright by it on any of said musical compositions. That said defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of the acts of said defendant and to account and pay over to plaintiff all of the gains, profits and advantages derived by said defendant Leo Feist, Inc. from its infringement of plaintiff's copyright.

(4) That defendants pay to plaintiff the costs

of this action and reasonable attorney's fees to be allowed to the plaintiff by the Court.

(5) That plaintiff have such other and further relief as is just.

J. M. DANZIGER,

Attorney for Plaintiff, Suite 1400, 408 South Spring
Street, Los Angeles, California.

[Endorsed]: Filed Mar. 2, 1942. [8]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS LOEW'S INCOR-
PORATED AND METRO - GOLDWYN -
MAYER CORPORATION TO FIRST
AMENDED COMPLAINT

Defendants Loew's Incorporated and Metro-Goldwyn-Mayer Corporation answer the First Amended Complaint on file herein as follows:

I.

Answering defendants deny the allegations contained in paragraphs V and VIII of the first cause of action, or in either of them.

II.

Answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs II, III and VI of said first cause of action, or in any or either of them. [9]

III.

Answering paragraph IV of said first cause of action answering defendants admit and allege that on or about May 16, 1912 said musical composition was duly and regularly registered for copyright by Leo Feist, the proprietor thereof, and a certificate of copyright duly and regularly issued to said Leo Feist; and that on or about May 22, 1939 said copyright was duly and regularly renewed by Leo Feist, Inc., Joe McCarthy and Joe Goodwin. Answering defendants are informed and believe and therefore allege that prior to May 22, 1939, and again subsequent to May 22, 1939 and prior to any use of said musical composition by answering defendants, said Joe McCarthy and Joe Goodwin assigned all of their right, title and interest in and to said renewal and in and to all rights created, granted or conferred thereby, to said Leo Feist, Inc. Answering defendants further admit that on or about June 1, 1939, plaintiff purported to renew said copyright in his own name, but allege that said purported renewal was void and ineffective in that, as answering defendants are informed and believe and therefore allege, plaintiff was not at said time, or at any time, the author or proprietor of said musical composition, or entitled to renew said copyright. Save and except as herein expressly admitted answering defendants deny generally and specifically each and every allegation contained in said paragraph IV.

IV.

Answering paragraph VII of said first cause of action answering defendants admit that defendant Loew's Incorporated used said musical composition and publicly performed it in a motion picture production named "Barnacle Bill" in which Wallace Beery is portrayed in the singing of said musical composition; and that said motion picture has been repeatedly exhibited. Save and except as herein expressly admitted answering defendants deny generally and specifically each and every allegation contained in said [10] paragraph VII.

V.

Answering paragraph IX of said first cause of action answering defendants admit that plaintiff has notified them of his claim that they are infringing his alleged copyright. Save and except as herein expressly admitted, answering defendants deny generally and specifically each and every allegation contained in said paragraph IX.

VI.

Answering paragraph X of said first cause of action answering defendants admit and allege that Leo Feist, Inc. has in fact licensed Loew's Incorporated to use said musical composition, under and by virtue of the copyright therein, which copyright is and at all times material herein has been owned by said Leo Feist, Inc. Save and except as herein expressly admitted answering defendants deny generally and specifically each and every allegation contained in said paragraph X.

VII.

Answering defendants do not answer the second cause of action for the reason that it is not directed against them or either of them.

VIII.

There is a non-joinder of necessary parties plaintiff in that said First Amended Complaint shows on its face that persons other than plaintiff are co-owners of the copyright in respect of which infringement is alleged, which persons are not joined as parties to the action.

IX.

Answering defendants are informed and believe and therefore allege that plaintiff has assigned to Leo Feist, Inc. all of his right, title and interest in and to all copyrights, renewal copyrights and rights of renewal, of said musical composition. [11]

X.

Answering defendants are informed and believe and therefore allege that said musical composition was written and composed by plaintiff as an employee of Leo Feist, under and pursuant to a contract of employment, by reason whereof Leo Feist, and thereafter his successor in interest Leo Feist, Inc., became and at all times has been the owner and proprietor of said musical composition and of all copyrights, renewal copyrights and rights of renewal therein and thereto.

Wherefore, answering defendants pray judgment

that plaintiff take nothing as against them by reason of his said First Amended Complaint, that the same be dismissed on the merits with said defendants' costs incurred herein, and for such other and further relief as to the court may seem proper.

LOEB AND LOEB,

By HERMAN F. SELVIN,

Attorneys for answering defendants.

(Verified.)

[Endorsed]: Filed Mar. 12, 1942. [12]

[Title of District Court and Cause.]

INTERROGATORIES TO BE ANSWERED BY
DEFENDANTS LOEW'S INCORPORATED
AND METRO-GOLDWYN-MAYER CORPO-
RATION

The plaintiff herein propounds the following interrogatories to be answered by any officer of each the defendants Loew's Incorporated and Metro-Goldwyn-Mayer Corporation competent to testify on its behalf, in writing, under oath, the answers to be served in accordance with the Rules.

Interrogatory 1:

State your name, address, length of service and official position with the corporation for whom you answer these interrogatories.

Interrogatory 2:

State whether there is to your knowledge, a license or other agreement between Leo Feist, Inc., and/or Metro-Goldwyn-Mayer Corporation and Loew's Incorporated, concerning the song "That's How I Need You."

Interrogatory 3:

Does your corporation have in its custody, or control, either the original or a copy of any such license, or other agreement between Leo Feist, Inc. and your Company, licensing or granting the right to use a song entitled "That's How I Need You" in any motion picture film, and particularly in the [13] film called "Barnacle Bill" in which Wallace Beery is portrayed as singing said song?

Interrogatory 4:

State whether such license or other agreement is in writing, and if so, please produce a copy of same and attach it to these interrogatories, and produce copies of any and all correspondence between Leo Feist, Inc. and your Company of and concerning the execution of said agreement or agreements.

Interrogatory 5:

If you refuse or are unable to produce the same or copies thereof, please state the terms of licensing, in detail.

Interrogatory 6:

If such license agreement is not in writing, please state the terms thereof, the date when made, the

parties thereto, their official positions with their respective companies.

Interrogatory 7:

If any consideration or payments were paid for or under such license or other agreement by your Company, state the amount thereof, the date of payment, to whom paid, how paid, and produce a copy of any check or other evidence of payment; also produce copy of any correspondence relating to such payments.

Interrogatory 8:

State whether your Company has in its possession or under its control a copy of the contract of employment between Leo Feist or Leo Feist, Inc. and Al Piantadosi, the plaintiff herein, referred to in Paragraph X of the Answer of your Company in this case, and produce a copy of same.

Interrogatory 9:

If you refuse or are unable to produce a copy of same, please state the terms thereof, and your source of information, and if such information is in writing, please produce such writing or a copy thereof.

Interrogatory 10:

State whether your Company has in its possession or under its control, a copy of any agreement between Joe Goodwin, and/or Joe McCarthy and Leo Feist or Leo Feist, Inc., of and concerning the copyright on, or the song entitled, [14] "That's How I Need You", or an assignment of any interest

therein, and if so, please produce a copy of all such agreements, and all correspondence between said parties of and concerning the same.

Interrogatory 11:

If you refuse or are unable to produce a copy of the documents referred to in Paragraph 10 above, please state what information you have concerning such contracts and the terms thereof and from whom you received such information, and if in writing, please produce such writing or a copy thereof.

Interrogatory 12:

State what stock ownership or other control your Company has in or over the corporation called Leo Feist, Inc., including the number of shares of said Leo Feist, Inc. owned by or held in behalf of your Company; the total number of similar shares outstanding of said Leo Feist, Inc., the names of the present Board of Directors and officers of Leo Feist, Inc.; the names of those nominated or selected by your Company.

Interrogatory 13:

State the date when the above shares were acquired by your Company and if and when your Company first nominated any directors or managing officers of said Leo Feist, Inc., and the names of such persons.

Interrogatory 14:

State what your Company records show concerning the approximate number of showings of the film called "Barnacle Bill" from its first show-

ing until some recent date agreeable to you; and state the approximate number of showings since July 25, 1941 to such date.

Interrogatory 15:

If you refuse or are unable to answer Question 14, please state your best estimate of the number of showings a film of the class and character of "Barnacle Bill" would receive after being marketed in the manner that this film has been marketed by your Company or in its behalf.

Interrogatory 16:

State whether your Company has in its possession, or under its control, original or copy of any assignment or assignments from Al Piantadosi to Leo [15] Feist, Inc., or Leo Feist, of any right, title or interest in the copyright, or right of renewal of copyright, or renewal copyright of the musical composition "That's How I Need You". If so, please produce a copy of such assignment or assignments.

Interrogatory 17:

If you refuse or are unable to produce copy of same, please state what information you have concerning the terms thereof and your source of information, and if such information is in writing, please produce such writing or a copy thereof.

J. M. DANZIGER,

Attorney for Plaintiff, Suite 1400 Continental Building, 408 South Spring Street, Los Angeles, California.

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES
PROPOUNDED BY PLAINTIFF

State of California,
County of Los Angeles—ss.

Sam Katz, being first duly sworn, answers the Interrogatories Propounded by Plaintiff as follows:

Answer to Interrogatory 1:

My name and address are Sam Katz, Loew's Incorporated, Culver City, Calif. I am and have been a Vice-President of Loew's Incorporated and of Metro-Goldwyn-Mayer Corporation. In answering the remaining interrogatories, I make the within answers on behalf of these two companies and in reliance on their records and upon communications made to, and information given, me by various of their employees and officers. The scope of the [17] business of these companies was and is of such size and complexity that no one officer can have personal knowledge of all of their affairs and records or of the acts of all of their officers.

Answer to Interrogatory 2:

I am informed by employees of Loew's Incorporated having supervision of such matters, that there was and is a license between Leo Feist, Inc. and Loew's Incorporated concerning the song "That's How I Need You"; and that there is no such license with Metro-Goldwyn-Mayer Corporation. In the latter connection I state that Metro-Goldwyn-Mayer Corporation transferred all its

property and assets to Loew's Incorporated on December 31, 1937 and since that time has done no business and carried on no activities whatever.

Answer to Interrogatory 3:

Loew's Incorporated has in its custody copies of letters sent to Leo Feist, Inc. and originals of letters received from Leo Feist, Inc., which letters contain and evidence the terms upon which Loew's Incorporated was granted the right to use a song entitled "That's How I Need You" in a motion picture film called "Barnacle Bill", (which motion picture was at first tentatively entitled "The Waterfront.") Copies of those letters are attached to the Affidavit of Abe Olman In Support of Motion For Summary Judgment heretofore filed herein and there respectively marked Exhibits E, F, G, H and I, which said copies are by this reference incorporated herein as though fully set forth. A copy of said affidavit has been served on plaintiff's counsel.

Answer to Interrogatory 4:

Answered by Answer to Interrogatory 3. [18]

Answer to Interrogatory 5:

Not answered because copies produced. See Answer to Interrogatory 3.

Answer to Interrogatory 6:

See Answer to Interrogatory 3. I am informed that on May 1, 1941 and May 2, 1941, Leo Feist, Inc., orally gave Loew's Incorporated the quotations referred to and confirmed in the letter of May 2, 1941, being Exhibit E of the letters re-

ferred to in my Answer to Interrogatory 3; and that the parties to these conversations were Abe Olman, secretary and general manager of Leo Feist, Inc., and Fred Raphael, an employee of Loew's Incorporated whose duties include the procuring of licenses for the use of musical numbers.

Answer to Interrogatory 7:

According to its records, Loew's Incorporated paid Leo Feist, Inc., as consideration for said license, the sum of \$515.64, which sum was paid on July 21, 1941 by check. Evidence of such payment is contained in a letter dated July 21, 1941 (being Exhibit H of the letters referred to in my Answer to Interrogatory 3) and a letter from Leo Feist, Inc., dated August 5, 1941, acknowledging payment, which letter is Exhibit I of the letters referred to in my Answer to Interrogatory 3. The two letters just referred to constitute the correspondence relating to this payment. A copy of the cancelled check evidencing such payment is attached hereto, marked Exhibit 1.

Answer to Interrogatory 8:

Loew's Incorporated has in its possession what purports to be a copy of the contract of employment between Leo Feist and Al Piantadosi, a copy of which is attached hereto [19] marked Exhibit 2. I am informed by our attorneys that a copy thereof was given to plaintiff's attorney on April 2, 1942.

Answer to Interrogatory 9:

Not answered because copy produced.

Answer to Interrogatory 10:

Loew's Incorporated has in its possession what purport to be copies of the following agreements or assignments, copies of which are attached hereto and marked respectively as indicated:

Exhibit 3—Assignment dated November 25, 1939, executed by Joe McCarthy;

Exhibit 4—Assignment dated November 25, 1939, executed by Joe Goodwin;

Exhibit 5—Assignment dated September 18, 1936, executed by Joe McCarthy;

Exhibit 6—Assignment dated September 28, 1936, executed by Joe Goodwin.

I am informed by our attorneys that copies of Exhibits 3 and 4 were given to plaintiff's attorney on April 2, 1942.

Answer to Interrogatory 11:

Not answered because copies produced.

Answer to Interrogatory 12:

Loew's Incorporated owns no stock in and has no control of Leo Feist, Inc. Loew's Incorporated does own 51% of the stock of Robbins Music Corporation which, I am informed, owns a controlling interest in Leo Feist, Inc. Loew's Incorporated, however, does not control Robbins Music Corporation for the reason that the stock which it owns does not permit it to [20] nominate or elect more than one-half of the members of the board of directors of Robbins Music Corporation, said Board consisting of four members. I do not know who the officers or directors of Leo Feist, Inc. are be-

yond the fact that I am informed that Abe Olman is secretary and general manager.

Answer to Interrogatory 13:

Not answered. See answer to Interrogatory 12.

Answer to Interrogatory 14:

See answer to Interrogatory 12.

Answer to Interrogatory 15:

This interrogatory cannot be answered for the reason that motion pictures are generally licensed to exhibitors for periods of one or more days with no restriction on the number of showings during any one or more days. The number of individual showings is, therefore, a matter for each exhibitor of whom there are several thousand and over whose records Loew's Incorporated has no control.

Answer to Interrogatory 16:

I am unable to make any estimate which would be sufficiently accurate to be of any value.

Answer to Interrogatory 17:

Loew's Incorporated has only a copy of the contract attached hereto as Exhibit 2.

Answer to Interrogatory 18:

See answer to Interrogatory 17.

SAM KATZ

Subscribed and sworn to before me this 22d day of June, 1942.

[Seal]

MARJORIE KING

Notary Public

Notary Public in and for the County of Los Angeles, State of California.

My commission expires Feb. 14, 1946. [21]

MARCUS LOEW BOOKING AGENCY, DISBURSING AGENT

LOEW BUILDING, BROADWAY AT 45TH ST., NEW YORK

41

14

PAY

VOUCHER NO.

DATE

95387 7/22/41

TO THE ORDER OF

AMOUNT

515 64

DO NOT DETACH ANY PART OF CHECK OR VOUCHER

TO THE NATIONAL CITY BANK OF NEW YORK

TIMES SQUARE BRANCH
FORTY-FIRST STREET AT BROADWAY
NEW YORK, N. Y.

1-R

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

REF. NO. DATE IN FULL SETTLEMENT OF FOLLOWING

F451 7/18

IN FULL TO COVER WORLD RIGHTS FOR THREE-"3"
INSTRUMENTAL-PARTIAL USES- 34 38 EACH AND
THREE VISUAL VOCAL PARTIAL USES AT 137 50
EACH OF COMPOSITION THATS HOW I NEED YOU
BY PIANTADOSI PUBLISHED BY MUSIC COMPANY
AS USED IN FEATURE BARACLES BELL FORMERLY
CALLED "WATERERON" 15

MAKE NO ALTERATIONS: RETURN IF NOT ACCEPTABLE

31 [The original cancelled check has an accounting memorandum pasted
32 on its face. For that reason it was necessary to take two views
of the face of the check in order that all of the writing or print-
ing appearing thereon might be visible in the photostat. The ori-
ginal check is available for inspection at the offices of
defendant's counsel.]

EXHIBIT 1

23

14

LOEW BUILDING, BROADWAY AT 45TH ST., NEW YORK

HER NO. DATE

5387 7/22/41

TO THE ORDER OF

AMOUNT

515 64

CHARGED IN THE PREVIOUS BALANCE AND
OUTSTANDING AT THE TIME THAT THE
CHARGE TICKET WAS SUBSTITUTED.

CHECK OR VOUCHER

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE _____

[illegible]

451	7/18
-----	------

IN FULL TO COVER WORLD RIGHTS FOR THREE-"
INSTRUMENTAL-PARTIAL USES- 34 38 EACH AND
THREE VISUAL VOCAL PARTIAL USES AT 137 50
EACH OF COMPOSITION. THATS HOW I NEED YOU
BY PIANTADOSI. PUBLISHER FEIST MUSIC COMPANY
AS USED IN FEATURE FILM BARACCA. SELLER FORMERLY
CALLED "WATERGATE" 315

MAKE NO ALTERATIONS: RETURN IF NOT ACCEPTABLE

ENDORSEMENTS

THIS VOUCHER CHECK IS A PAYMENT IN FULL OF THE WITHIN ACCOUNT, AND THE PAYEE ACCEPTS IT AS SUCH BY ENDORSEMENT BELOW.

NO OTHER RECEIPT NECESSARY.

David M. M...
 PAY TO THE ORDER OF
THE CHASE NATIONAL BANK
 OF THE CITY OF NEW YORK
 ROCKEFELLER CENTER BRANCH
 LEO. FEIST, INC.

PAID
 \$ 10.41

\$ 10.41

38

Exhibit 1.

EXHIBIT No. 2

This Agreement made this 23rd day of August, 1909 between Leo Feist, Music Publisher, hereinafter described as the "Publisher", of the Borough of Manhattan, city of New York, party of the first part, and Al Piantadoso of the same place, hereinafter described as the "Composer" party of the second part, Witnesseth:

I. The Publisher hereby hires and employs the composer to write and compose operas, musical comedies, musical plays, songs and other musical compositions for a period of three years from the date hereof.

II. The Composer hereby accepts such employment and covenants and agrees to deliver to the Publisher any and all operas, musical comedies, musical plays, songs and other musical compositions, which the composer alone, or in conjunction with others, may write or compose during the period of three years, beginning on the date of this agreement, and the Composer grants and conveys to the Publisher the publishing rights, the rights to use for mechanical reproduction, and the copyright or copyrights with renewals, and the right to copyright and renew copyrights in any and all operas, musical comedies, musical plays, songs or other musical compositions, which he either alone or in conjunction with others may write during said period of three years, including the titles and every part thereof: and the Composer hereby expressly

covenants and agrees that the publishing rights, the right to use for mechanical reproduction and the copyright or copyrights with renewals of copyright, and the right to copyright and renew copyrights, in any and all operas, musical comedies, musical plays, songs or other musical [25] compositions said period of three years, shall immediately upon being written become and be the sole and absolute property of the Publisher, including the titles and every part thereof. And the Composer covenants and agrees not to write for or deliver to any person, firm or corporation, other than the Publisher, at any time during the said period of three years, any operas, musical comedy, musical plays, song or other musical composition, or the title or any part thereof, and not to grant to any person, firm or corporation, other than the Publisher, the publishing rights, the right to use for mechanical reproduction, the copyright or copyrights or renewals of copyright, or the right to copyright or renew copyrights in any operas, musical comedy, musical play, song or other musical composition, which during said period of three years he may write, either alone or in conjunction with others, and not to permit any such work or compositions so written by him, or the title or any part thereof, to be published, or to be used for mechanical reproduction by any person, firm or corporation, other than the Publisher, the Composer expressly covenants and agrees that he will not during the term of this agreement collaborate with any person in writing

any operas, musical comedy, musical play, song or other musical composition, except upon condition that the publishing rights, the rights to use for mechanical reproduction and the copyright, renewals of copyright, the right to copyright or renew copyrights in such work or composition shall be granted to and become the property of the publisher.

III. The Composer further agrees that he will write for and deliver to the Publisher not less than eight musical compositions during each year of the term of this agreement. The Publisher agrees to publish during each year of this [26] agreement not less than three of the compositions acquired from the Composer.

Fourth: The Publisher agrees to pay to the Composer the following royalties on account of the sale of copies of any work or composition which the Publisher shall acquire from the Composer in pursuance of this agreement, to wit:

One cent for each copy of all works or compositions sold at from 7 to 10 cents per copy;

Two cents for each copy of all works or compositions sold at 10 cents and up to 12 cents per copy;

Three cents for each copy of all works or compositions sold at from 12½ to 15 cents per copy;

Four cents for each copy of all works or compositions sold at more than 15 cents per copy.

A sum equal to one-half of the above royalties shall be paid for copies sold by the Publisher in

foreign countries; or when written in conjunction with another writer.

It Is Understood and Agreed that no royalties are to be paid for copies disposed of as new issues, or for professional or copies distributed for advertising purposes.

It Is Furthermore Understood and Agreed, that no royalties shall be paid for copies returned to the Publisher, for copies of any arrangement of any such work or composition for or to be used in connection with an orchestra or band or for the mandolin, zither or any other musical instrument, (excepting the piano or instruments for the mechanical reproduction of music,) or for any copies of any medley, book or other collective publication containing the whole or parts of the piano scores of any two or more such works or compositions whether sold in sheet, folio or book form [27] or otherwise, as to all of which aforesaid copies the Publisher shall have the exclusive right to print, sell or otherwise distribute or dispose of the same for his own benefit and behoof.

The Publisher agrees to pay to the Composer 25 per cent of all monies received by the Publisher from or on account of the use of any work or composition of the Composer for mechanical reproduction under the license of the Publisher.

Fifth: The Publisher further agrees to advance to the Composer on account of the royalties to be earned by him under this agreement the sum of Ten (\$10.00) Dollars per week for each week during

the first year of this agreement. The Publisher may deduct and retain the amount of all advance payments made to the Composer from the royalties accruing and becoming due to him. The Composer agrees that in case the advance payments made to him shall at the termination of this agreement be found to be in excess of the royalties then and until then earned by him, he will pay to the Publisher the amount received in excess.

Sixth: The Publisher agrees that he will render unto the said Composer semiannual statements between the 15th and 31st days of January and July of each year, showing all sales and the royalties earned by the said Composer, and will pay to him at the same time all the royalties due and owing to him.

Seventh: The Composer hereby declares and covenants that he is entirely free and has a good right to make this agreement; that he has not entered into any contract or agreement of any description which prevents him or could prevent him from carrying out in full the purposes of this contract. [28]

And the Composer further covenants and agrees to protect and to defend the right, title and interest of the Publisher to the fullest extent, in any opera, musical comedy, musical play, songs or any other musical compositions, which the said Publisher may acquire from the Composer.

Eighth: Each and every covenant in the fore-

going contract shall enure to the benefit of the Publisher, his Heirs, executors, administrators and assigns.

Ninth: It is Further Covenanted and Agreed that this agreement and the terms and conditions thereof may be extended at the option of the Publisher for an additional term of three years from the date of the expiration of the first term of this agreement, upon the Publisher giving to the Composer at least two months before the expiration of the term, notice of his intention to renew the contract, and upon the giving of such notice this agreement and every term and condition thereof shall remain in full force and effect for additional term of three years.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) AL PIANTADOSI, L. S.

(Signed) LEO FEIST, L. S.

In the presence of

(Signed) E. F. BITNER [29]

EXHIBIT No. 3

For and in Consideration of One Dollar and other good and valuable consideration, receipt whereof is hereby acknowledged, Joe McCarthy, for and on behalf of himself, and all other parties in interest

to the extent he is authorized to act for and on their behalf, hereby transfers, assigns and sets over to Leo Feist, Inc., all rights whatsoever in and to the musical compositions entitled:

If Every Star was a Little Pickaninny
I'm Sending a Message to Mama
Who's Goin' to do Your Lovin' When I'm Gone
Whose Loving Darling Are You
Your Daddy Did the Same Thing Fifty Years
Ago

I'm Living Dear Just for You
Love is a Peculiarity
That's How I Need You
When I Get You Alone Tonight
At the Yiddisher Ball
Billy, Billy, Bounce Your Baby Doll
Be Sure He's Irish
Honey Rose
When Mother Plays a Rag Upon the Sewing
Machine

There's Lots of Stations on My Railroad Track
Love, Honor and Obey
One Little Girl
When I Marry the One I Love

under the renewals and extensions of the copyrights therein and for and during every period in respect of which copyrights shall subsist beyond the date that the original term of copyrights in said works shall have first subsisted, together with any and all renewals and extensions of the copyrights therein.

In Witness Whereof, the said Joe McCarthy has executed this instrument and affixed his seal this 25th day of November, 1939.

JOE McCARTHY (L. S.) [30]

EXHIBIT No. 4

For and in consideration of \$1.00 and other good and valuable consideration, in hand paid, receipt whereof is hereby acknowledged, the undersigned, for and on behalf of himself (~~herself~~) and all other parties in interest, hereby transfers, assigns and sets over to Leo Feist, Inc., all rights whatsoever in and to the musical composition(~~s~~) entitled:

That's How I Need You

under the renewal and extension of the copyright(~~s~~) therein and for and during every period in respect of which copyright(s) shall subsist beyond twenty-eight years from the date that the copyright(s) in said work(~~s~~) shall have first subsisted.

In Witness Whereof, the undersigned has executed this instrument this 25th day of November 1939.

JOE GOODWIN (L. S.) [31]

EXHIBIT No. 5

That for and In Consideration of One Dollar and other good and valuable consideration from Leo Feist, Inc. (hereinafter referred to as "Feist"),

to Joe McCarthy, (hereinafter referred to as "McCarthy"), receipt whereof is hereby acknowledged, and of the premises, McCarthy, for and on behalf of himself, and all other parties in interest to the extent he is authorized or may become authorized to act for and on their behalf, hereby bargains, sells, transfers, assigns and sets over to Feist, everywhere, forever and without limitation, under the renewals and extensions of the copyrights to the musical compositions enumerated on Schedule A hereto annexed and made a part hereof, and for and during every period in respect of which copyrights shall subsist beyond the date that the copyrights in said works shall have subsisted for the original term thereof (hereinafter referred to collectively as "said compositions"), including without limitation, any and all renewals and extensions of the copyrights in and to said compositions throughout the world and the sole and exclusive right in Feist of ownership, use, publication and sale, as the sole owner and proprietor thereof throughout the world, and the sole and exclusive right to renew and extend the copyrights subsisting in said compositions and to make application therefor and to register the same in the name of McCarthy or Feist and any and all co-writers and composers thereof as in such case made and provided, together with each and every right and use to which said compositions and each and every part, arrangement and form thereof can or may be put, and any and all benefits, ad-

vantages, income, revenue, royalties, fees and rights of any and every nature, kind and description whatsoever, derived and derivable, accrued or which may, might or shall hereafter accrue, in any and all parts of the world, directly and indirectly from any and every use and purpose thereof whatsoever, and from any and every contract, agreement, right, privilege, grant and license in respect thereof, whether now or hereafter known or in existence, and whether within the contemplation of the parties or not, and from the literary and musical property therein, together with the sole right, power and authority to make any and all versions, omissions, additions, changes, substitutions and adaptations in and to said compositions, the titles, words and music thereof, and any and every part and parts thereof, provided, however, McCarthy reserves to himself the sole and exclusive right to license the recording for motion picture use throughout the world, of the musical compositions only comprising the scores of the productions entitled "Irene", "Rio Rita", "Kid Boots" and "Up She Goes", and to collect and receive all moneys accruing from such rights to such musical compositions comprising said scores, and further provided that no right is granted or conveyed to give any stage presentation of the said musical comedies entitled "Irene", "Rio Rita", "Kid Boots" and "Up She Goes". [32]

That in consideration of and subject to Feist acquiring the rights to said compositions as in this

instrument provided, Feist shall pay or cause to be paid the compensation and remuneration as royalties and fees specified in said Schedule A annexed, to McCarthy (and to such other party or parties in interest designated in said Schedule A from whom Feist shall acquire the rights in said compositions as in this instrument provided), being the total compensation and remuneration payable by Feist for any and all rights acquired by Feist in said compositions from any and all parties in interest.

That in further consideration of Feist acquiring the rights to said compositions as in this instrument provided, Feist has paid to McCarthy upon the execution of this instrument, the sum of Three Thousand (\$3,000.) Dollars, receipt whereof is hereby acknowledged, which shall be on account and in advance of all moneys whatsoever to become payable under both this instrument and any and all prior agreements affecting said compositions for the original terms of copyrights thereof as royalties and fees. That Feist shall not be obligated for the payment of any other moneys in respect to said compositions on and after the date hereof until it shall have first recouped the amount of said advance payment from the moneys as royalties and fees first becoming due on and after the date hereof under both this instrument, and any and all prior agreements affecting said compositions for the original terms of copyrights thereof.

That in respect of each of said compositions that shall be published by Feist during the copyright renewal period, for such time as royalties and fees shall accrue hereunder in respect thereof, Feist shall render or cause to be rendered, statements and shall make or cause to be made payment to McCarthy (and to such other party or parties in interest designated in said Schedule A from whom Feist shall acquire the rights in said compositions as in this instrument provided), for such royalties and fees specified within sixty days after December 31st and June 30th respectively of each year for each such preceding semi-annual period (after the advance shall have been earned from all moneys to become payable under this instrument and all prior agreements affecting said compositions).

Feist shall have the right to grant, license, transfer, assign, sell and dispose of any and all rights acquired under this instrument. McCarthy undertakes and agrees to make, execute and deliver and procure the making, execution and delivery of any and all further instruments, documents and writings that shall be requested by Feist and its successors, assigns and licensees, for the purpose of perfecting and confirming any and all rights acquired by Feist hereunder, and McCarthy hereby nominates and appoints Feist and its each and every successor, assign and licensee, the true and lawful attorney of McCarthy and all other parties in interest, to make, execute and deliver any and all such instruments, documents and writings in

the name of McCarthy and such other parties in interest, this power being coupled with an interest and irrevocable.

That as an inducement to Feist to pay the consideration provided and to exercise the rights under this instrument, [33] McCarthy warrants and represents: That he is the author of the words of said compositions as designated in Schedule A; that he and/or Feist has the right to renew and extend the copyrights in said compositions; that said compositions and each and every part thereof are original and do not infringe upon any other musical compositions, numbers, works or material, and that said compositions are not in the public domain; that he has never bargained, sold, assigned, transferred, hypothecated, pledged or incumbered any right, title or interest in or to the renewal or extension of the copyrights in said compositions or in or to said compositions under the renewal or the extensions of the copyrights therein, or the right of renewal or extension thereof (other than under any prior agreements with Feist). That in the event any claim is made in respect of any of said compositions or the renewal or extension of the copyrights therein, then every obligation of payment hereunder shall cease and terminate until action shall be brought by every such claimant and every such claim finally disposed of and adjudicated. Feist and its successors in interest shall have the right, in its or their discretion, to employ counsel in respect of any and all such claims and to prosecute and defend

any and all actions and proceedings that it or they, in its or their sole discretion, may deem advisable, and to settle all such claims, before or after suit, for such amounts and upon such terms as it or they may, in its or their sole discretion, deem advisable; McCarthy to indemnify and hold Feist and its successors in interest harmless by reason of all of the foregoing.

In Witness Whereof, Joe McCarthy has executed this instrument and affixed his seal this 18 day of September, 1936.

JOE McCARTHY (L. S.)

Sept 18th 1936 [34]

Schedule A

(1) The total compensation and remuneration payable by Feist as royalties and fees in any event (one-half of which shall be payable to McCarthy where there are two writers and composers, and one-third of which shall be payable to McCarthy where there are three writers and composers, the payment to such other writers and composers, being conditioned upon Feist acquiring their respective interests in said compositions for the renewal and extended periods of copyright, as in the foregoing instrument provided), in respect to the following compositions, are, viz:

3c for each regular pianoforte copy of said compositions sold, paid for and not returned, in the United States and Canada;
33-1/3% of all moneys received by Feist from the United States and Canada, for its own

use and benefit, from the mechanical reproduction of said compositions for phonograph records and music rolls and from the recording of electrical transcriptions;

33-1/3% of all moneys received by Feist for its own use and benefit from the licensing of said compositions for recording for motion picture and television use; and

33-1/3% of all earned royalties and fees received by Feist from the sale of pianoforte copies and the mechanical reproduction of said compositions for phonograph records, music rolls and electrical transcriptions, from publishers authorized by Feist, outside of the United States and Canada.

Words—Joe McCarthy Music—Al Piantadosi

Funny Moon

In All My Dreams I Dream of You

Mother's Child

San Francisco Glide

That Dreamy Italian Waltz

That *Todelo* Tune

Give Me a Small Town Sweetheart

Honey Man—My Little Lovin' Honey Man

I Just Met the Fellow That Married the Girl I

Was Going to Get

Somehow I Can't Forget You

Summer Days

That Long Lost Chord

When Broadway Was a Pasture

At the Yiddisher Ball (Harry Piani)

Love Is a Peculiarity

Who's Goin' to Do Your Lovin' When I'm Gone

I've Loved You Since You Were a Baby

I'm Looking for Antone

I'm Sending a Message to Mama [35]

* That 's How I Need You * * *

EXHIBIT No. 6

That For and in Consideration of One Dollar and other good and valuable consideration from Leo Feist, Inc. (hereinafter referred to as "Feist"), to Joseph Altschuler also known as Joe Goodwin, residing at 1335 North Gordon Street, Hollywood, Calif., (hereinafter referred to as the "Writer"), receipt whereof is hereby acknowledged, and of the premises, the Writer, on behalf of himself and all other parties in interest, hereby bargains, sells, transfers, assigns and sets over to Feist, everywhere, forever and without limitation, under the renewals and extensions of the copyrights, to all the musical compositions wholly or partly written and/or composed by the Writer alone or in collaboration with one or more other writers and/or composers, the publication rights to which were at any time heretofore acquired by Feist, and including without limitation and among all others the partial list of such musical compositions enumerated on Schedule A hereto annexed and made a part hereof, and any and all other editions and publications embodying the whole or any material

part of the title, words or music thereof or issued under the same, like or similar title, and for and during every period in respect of which copyrights shall exist beyond twenty-eight years from the date that the copyrights in said works shall have first subsisted (all of which are hereinafter referred to as "said compositions"), including without limitation, any and all renewals and extensions of the copyrights in and to said compositions throughout the world and the sole and exclusive right of ownership, use and publication and sale, as the sole owner and proprietor thereof throughout the world, and the sole and exclusive right to renew and extend the copyrights subsisting in said musical compositions and to make application therefor and to enter and register the same in the name of the Writer and any and all co-writers and/or composers thereof, together with each and every right and use to which said compositions and each and every part, arrangement and form thereof, can or may be put, and any and all benefits, advantages, income, revenue, royalties, fees and rights of any and every nature, kind and description whatsoever, derived and derivable, accrued or which may, might or shall hereafter accrue, in any and all parts of the world, directly and indirectly, from any and every use and purpose whatsoever, and from any and every contract, agreement, right, privilege, grant and license in respect thereof, whether now or hereafter known or in existence and whether within the contemplation of the parties or not, and from the literary and musical property therein, together

with the sole right, power and authority to make any and all versions, omissions, additions, changes, substitutions and/or adaptations in and to said compositions, the titles, words and music thereof, or any and every part or parts thereof.

That subject to the warranties and representations contained herein being true, Feist shall pay, or cause to be paid, the sums of money as the total royalties and fees for and on behalf of all parties in interest as, or through, the writers and composers of said compositions, designated on said Schedule A hereto annexed; it being specifically understood and agreed anything to the contrary notwithstanding, that the sums designated on said Schedule A as payable in respect of each of said compositions, represent the total amount payable by Feist in any event as to each of said com- [36] positions, and if any other or different interests appear, then such total amount payable as to each of said compositions, shall be pro-rated and paid as all interests shall appear. That anything to the contrary notwithstanding, there shall be no obligation of Feist to require the payment of any compensation or any amount of compensation, for the licensing of the recording and/or performance of said compositions for motion picture use.

That in further consideration of the rights acquired by Feist under this instrument, and in reliance upon the truth of the warranties and representations therein contained, Feist has paid to the Writers upon the execution of this instrument, the sum of \$250.00, receipt whereof is hereby

acknowledged, which shall be on account and in advance of all moneys to become payable as royalties and fees in respect to said compositions. That Feist shall not be obligated for the payment of any royalties or fees in respect to said compositions until it has first recouped the amount of such advance payment and all other moneys loaned or advanced to the Writers and/or all other parties in interest in said compositions, whether in respect to said compositions or otherwise.

That in respect of each of said compositions that shall be published by Feist during the copyright renewal period, for such time as royalties and fees shall accrue hereunder, Feist shall render, or cause to be rendered, statements and make, or cause to be made, payment to the Writer and such other party or parties in interest, for such royalties and fees as in this instrument provided, within a reasonable time after March 1st and September 1st of each year for the preceding semi-annual periods ending December 31st and June 30th respectively.

Feist shall have the right to grant, license, transfer, assign, sell and dispose of any and all rights acquired under this instrument.

The Writer undertakes and agrees, to make, execute and deliver and to procure the making, execution and delivery, of any and all further instruments, documents and writings that shall be requested by Feist or its successors or assigns, for the purpose of perfecting and confirming any and all rights acquired by Feist hereunder, and the Writer hereby nominates and appoints Feist and its each

and every successor and assign, the true and lawful attorney of the Writer and all other parties in interest, to make, execute and deliver any and all such documents and writings in the name of the Writer, and/or all other parties in interest, this power being coupled with an interest and irrevocable.

That as an inducement to Feist to enter into this agreement and to make the payments provided, the Writer warrants and represents: that the Writer is the co-author and/or co-composer of the words and/or music of all of said compositions; that the writer and/or Feist have the sole right to renew and extend the copyrights in said compositions; that said compositions and each and every part [37] thereof are original and do not infringe upon any other musical compositions, numbers, works or material, and that neither said compositions nor any parts thereof are in the public domain; that the Writer has the full right, power and authority to enter into this agreement for and on behalf of the writer and all other parties in interest whatsoever; and that no right, title or interest in or to the renewal or extension of the copyrights in said compositions, or in or to said compositions under the renewal or extension of the copyrights therein, or the right of renewal, or extension thereof (other than under prior agreements with Feist) has ever been bargained, sold, assigned, transferred, hypothecated, pledged or incumbered by the writer or any other party or parties in interest. That in the

event any claim or demand is made in respect to any of said compositions or the renewal or extension of the copyrights therein, then every obligation of payment hereunder shall cease and terminate until action shall be brought by every such claimant and/or every such claim finally adjudicated and disposed of. Feist and its successors, in interest, shall have the right, in its or their discretion, to employ counsel in respect of any and all such claims and demands and to prosecute and defend any and all actions and proceedings that it or they in its or their sole discretion, may deem advisable and to settle and pay any and all such claims and demands before or after suit for such amounts and upon such terms as it or they may, in its or their sole discretion, deem advisable; the writer and such other parties in interest aforesaid shall indemnify and hold Feist and its successors in interest harmless by reason of all the foregoing and be liable to them and each of them for the payment of any and all obligations and expenditures arising out of the same.

In Witness Whereof, the writer has executed this instrument and affixed his seal this 28th day of September 1936.

JOE GOODWIN (L. S.)

Joseph Altschuler under
pseudonym of Joe Goodwin

LEO FEIST, INC.

By ABE OLMAN,

Vice-President. [38]

SCHEDULE A

Title	Writers and Composers				
He's On a Boat That Sailed Last Wednesday	Joe Goodwin and Lew Brown				
I'm Afraid I'm Beginning to Love You	..	..	..	..	..
Kiss Me Good-Night	..	..	..	..	..
The Ragtime Dream	..	..	..	..	..
One Little Girl	..	..	..	Joe McCarthy	
How Late Can You Stay Out Tonight	Joe Goodwin — Fred Fisher				
In My Beautiful, Beautiful Dreams	..	..	— Oreste Migliaccio		
Won't You Give Me a Chance to Love You	..	..	— James V. Monaco		
Brass Band Ephraim Jones	..	..	— George W. Meyer		
It's My Business to Know Them All	..	..	—	..	..
Sweetie Sweet	..	..	—	..	..
Haven't You Forgotten Something Dearie	..	..	— Al Piantadosi		
When You Play in the Game of Love	..	..	—	..	..
I Don't Care Whose Girl You Were	..	..	— W. Raymond Walker		
Ireland Never Seemed So Far Away	..	..	—	..	..
Stop It or You'll Be Too Late	..	..	—	..	..
You Broke My Heart to Pass the Time Away	Leo Wood — Joe Goodwin				
At the Midnight Masquerade	Lew Brown & Joe Goodwin — Nat D. Ayer				
Lonesome Baby	..	..	—	..	..
That Little German Band	Joe McCarthy & Joe Goodwin — Fred Fisher				
When I Get You Alone Tonight	..	..	—	..	..

Schedule A—(Continued)

Title	Writers and Composers				
Any Boy Could Love a Girl Like You	"	"	—	Al Piantadosi	
Cute and Cunning Wonder- ful Baby Doll	"	"	—	"	"
Melinda's Wedding Day	"	"	—	"	"
That's How I Need You (c) 5/16/12	"	"	—	"	"
Then I'll Stop Loving You	"	"	—	"	"
When I Marry the One I Love	Joe McCarthy & Joe Goodwin — Al Piantadosi				
Whose Loving Darling Are You	"	"	—	"	"
Your Daddy Did the Same Thing Fifty Years Ago	"	"	—	"	"
Oo-ga-lee-oo-ga-lee-oo	Edgar Leslie & Joe Goodwin — " "				
Where Was Moses When the Lights Went Out	"	"	—	"	"
Honey Rose	Joe McCarthy & Joe Goodwin — Chris Smith				
Love Honor and Obey	"	"	—	"	"
When Mother Plays a Rag Upon That Sewing Machine	"	"	—	"	"
Oh So Sweet	"	"	—	"	"

The following sums of money are the total royalties and fees payable by Feist in respect to the hereinbefore entitled compositions, each * * *

[Endorsed]: Filed Jun. 23, 1942. [39]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY
JUDGMENT IN FAVOR OF DEFENDANTS

To: Plaintiff above-named and to his Attorney of
Record.

You and each of you will please take notice that

on June 29, 1942, at 10:00 o'clock a. m., or as soon thereafter as counsel may be heard, defendants Loew's Incorporated and Metro-Goldwyn-Mayer Corporation will move the above-entitled court, in courtroom 1 thereof, for a summary judgment herein in favor of said defendants.

Said motion will be made upon the following, and separately upon each of the following, grounds, to wit:

1. There is no genuine issue as to any material fact herein;
2. Each of the moving defendants is entitled to judgment as a matter of law; [40]
3. The facts establish as a matter of law that neither of said defendants has infringed the copyright which is the subject of the action.

Said motion will be based upon this notice of motion, upon the pleadings herein, upon the affidavits of E. J. Mannix and Abe Olman filed herewith, and upon all the files, papers and records herein.

Dated: June 16, 1942.

LOEB and LOEB

By HERMAN F. SELVIN

Attorneys for moving defendants

[Endorsed]: Filed Jun. 16, 1942. [41]

[Title of District Court and Cause.]

AFFIDAVIT OF ABE OLMAN IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

State of New York

County of New York—ss.

Abe Olman, being duly sworn, deposes and says:

I am over the age of twenty-one years and in full possession of all my faculties. I have personal knowledge of the facts herein below stated.

I am, and since on or about October 25, 1935, I have been, secretary and general manager of defendant Leo Feist, Inc., a corporation, and I am, and since on or about October 4, 1937, I have been secretary and general manager of Robbins Music Corporation, a corporation affiliated with said Leo Feist, Inc. During said period that I have been secretary and general manager of said Leo Feist, Inc., I have familiarized myself with all of the records of said Leo Feist, Inc.

The records of said Leo Feist, Inc. disclose that the musical composition entitled "That's *Why* I Need You", written by plaintiff Al Piantadosi in collaboration with Joe McCarthy and Joe Goodwin, (the subject matter of the first cause of action of the first amended complaint herein) was copyrighted by Leo Feist, an individual, (who as the predecessor in interest of said Leo Feist, Inc. was then conducting a music publishing business under his name) as the proprietor thereof (*an* an employer for whom said work had been made for

hire by plaintiff Al Piantadosi and by virtue of assignments from Joe McCarthy and Joe Goodwin, the co-authors thereof) by his [42] publication thereof on May 16, 1912 with the notice of copyright required by the Copyright Act and that he obtained registration in his name of his claim to said copyright therein in the office of the Register of Copyrights, Washington, D. C. on May 17, 1912, Entry: Class E, XXc., No. 284725, by complying with the provisions of the Copyright Act, including the deposit of copies, and that thereupon the Register of Copyrights issued to him the certificate provided for in section fifty-five of said Act. A true, correct and complete photostatic copy of said certificate is attached hereto, marked Exhibit A and by this reference incorporated herein as though fully set forth.

The records of said Leo Feist, Inc. disclose that on or about June 25, 1912 the said Leo Feist, Inc. succeeded to said music publishing business of said Leo Feist and to all the property, assets and records thereof, including among all other things said musical composition entitled "That's *Why* I Need You" and all rights and interest therein and thereto and in the copyright therein and all records of said Leo Feist relating to said musical composition, and ever since said Leo Feist, Inc. has been and now is the sole owner thereof.

On May 22, 1939 and within one year prior to the expiration of said original term of copyright in said musical composition entitled "That's *Why*

I Need You", said Leo Feist, Inc. obtained a renewal and extension of the copyright therein both in its name as proprietor (by reason of the copyright having been originally secured by its predecessor in interest as an employer for whom said work had been made for hire) and for, on behalf of and in the names of Joe McCarthy and Joe Goodwin as the authors of the words thereof, by making application therefor to the said Copyright Office, which application was thereupon duly registered therein on May 22, 1939, [43] renewal registration No. 76764, as provided by section twenty-three of said Act. A true, correct and complete photostatic copy of the certificate of the Register of Copyrights of said registration thereof is attached hereto, marked Exhibit B and by this reference incorporated herein as though fully set forth.

Thereafter and on and under date of November 25, 1939, the said Joe McCarthy executed and delivered to said Leo Feist, Inc. a written assignment of all of his rights whatsoever in and to said musical composition entitled "That's *Why I Need You*" under said renewal and extension of copyright therein and for and during the period of said renewal and extension of copyright *therein and for and during the period of said renewal and extension of the copyright* therein. A true, correct and complete photostatic copy of said assignment is attached hereto, marked Exhibit C and by this reference incorporated herein as though fully set forth. I am familiar with the signature of said Joe McCarthy appearing on the original

of said assignment, which signature is in fact the signature of said Joe McCarthy.

Thereafter and on and under date of November 25, 1939, the said Joe Goodwin executed and delivered to said Leo Feist, Inc. a written assignment of all his rights whatsoever in and to said musical composition entitled "That's *Why* I Need You" under said renewal and extension of copyright therein and for and during the period of said renewal and extension of the copyright therein. A true, correct and complete photostatic copy of said assignment is attached hereto, marked Exhibit D and by this reference incorporated herein as though fully set forth. I am familiar with the signature of said Joe Goodwin appearing on the original of said assignment, which signature is in fact the signature of said Joe Goodwin. [44]

Thereafter said Leo Feist, Inc., as the proprietor of the renewal copyright therein, licensed and consented to the use by defendant Loew's Incorporated (referred to in the first cause of action of the first amended complaint herein) of said musical composition entitled "That's *Why* I Need You" in the motion picture production of Loew's Incorporated entitled "Barnacle Bill", formerly entitled "The Waterfront". Said license is evidenced by the following communications:

Dated May 2, 1941, from Fred Raphael of said Loew's Incorporated to deponent.

Dated July 3, 1941, from said Fred Raphael to deponent.

Dated July 16, 1941, from deponent to said Fred Raphael.

Dated July 21, 1941, from said Fred Raphael to deponent.

Dated August 5, 1941, from Paul Vrablic of said Leo Feist, Inc. to said Fred Raphael.

A true, correct and complete copy of each of said communications is attached hereto, marked respectively Exhibit E, Exhibit F, Exhibit G, Exhibit H and Exhibit I, and by this reference incorporated herein as though fully set forth. In said communications Feist Music Company refers to said Leo Feist, Inc., Robbins Music Company refers to said Robbins Music Corporation, said Paul Vrablic then was and still is the accountant of said Leo Feist, Inc. and said Fred Raphael then was and still is an employee of said Loew's Incorporated. I am familiar with the signatures of said Paul Vrablic and Fred Raphael appearing on the originals of said communications, which signatures together with my signature are in fact the signatures of the persons whose signatures [45] they purport to be.

ABE OLMAN

Subscribed and sworn to before me this 9th day of June, 1942.

[Seal] WILLIAM LIEBER

Notary Public in and for the County of New York, State of New York. William Lieber, Notary Public N. Y. Co. Clk's No. 387, Reg. No. 3 L 554. Commission expires March 30, 1943.

No. 17409

State of New York,
County of New York—ss.

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court, New York County, the same being a Court of Record having by law a seal, do hereby certify, that William Lieber whose name is subscribed to the annexed deposition, certificate of acknowledgment or proof, was at the time of taking the same a Notary Public in and for said County, duly commissioned and sworn and qualified to act as such and authorized by the laws of the State of New York to protest notes, to take and certify depositions, to administer oaths and affirmations and certify the acknowledgment or proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this State. And further, that I am well acquainted with the handwriting of such Notary Public, or have compared the signature of such officer with his autograph signature filed in my office, and believe that the signature to the said annexed instrument is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Court and County this 10 day of June, 1942.

[Seal] ARCHIBALD R. WATSON

County Clerk and Clerk of the Supreme Court,
New York County. [46]

EXHIBIT A

Leo. Feist, New York, N. Y. Title of music:

That' How I Need You. Words by Joe McCarthy
and Joe Goodwin. Music by Al. Piantadosi.

Copies received May 17, 1912. Date of publica-
tion May 16, 1912.

Entry: Class E, XXc., No. 284725

[Seal]

THORVALD SOLBERG

Register of Copyrights.

EXHIBIT B

The copyright is claimed by the Proprietor of
Copyright in a work made for hire (A Piantadosi)
and The Authors of Words.

The work is described as a Musical Composition
and is entitled *That's How I Need You.* Words
by Joe McCarthy & Joe Goodwin. Music by Al
Piantadosi.

The date of original publication was May 16,
1912. Entry no. Exxx 284725

Application filed May 22, 1939. Renewal regis-
tration no. 76764

[Seal]

C. L. BOUVE

Register of Copyrights. [47]

EXHIBIT C

For and in Consideration of One Dollar and
other good and valuable consideration, receipt

whereof is hereby acknowledged, Joe McCarthy, for and on behalf of himself, and all other parties in interest to the extent he is authorized to act for and on their behalf, hereby transfers, assigns and sets over to Leo Feist, Inc., all rights whatsoever in and to the musical compositions entitled:

If Every Star Was a Little Pickaninny
I'm Sending a Message to Mama
Who's Goin' to Do Your Lovin' When I'm
Gone
Whose Loving Darling Are You
Your Daddy Did the Same Thing Fifty Years
Ago
I'm Living Dear Just for You
Love Is a Peculiarity
That's How I Need You
When I Get You Alone Tonight
At the Yiddisher Ball
Billy, Billy, Bounce Your Baby Doll
Be Sure He's Irish
Honey Rose
When Mother Plays a Rag Upon the Sewing
Machine
There's Lots of Stations on My Railroad Track
Love, Honor and Obey
One Little Girl
When I Marry the One I Love

under the renewals and extensions of the copyrights therein and for and during every period in respect of which copyrights shall subsist beyond the date

that the original term of copyrights in said works shall have first subsisted, together with any and all renewals and extensions of the copyrights therein.

In Witness Whereof, the said Joe McCarthy has executed this instrument and affixed his seal this 25th day of November, 1939.

JOE McCARTHY (L. S.) [48]

EXHIBIT D

For and in consideration of \$1.00 and other good and valuable consideration, in hand paid, receipt whereof is hereby acknowledged, the undersigned, for and on behalf of himself (~~herself~~) and all other parties in interest, hereby transfers, assigns and sets over to Leo Feist, Inc., all rights whatsoever in and to the musical composition(~~s~~) entitled:

That's How I Need You

under the renewal and extension of the copyright(~~s~~) therein and for and during every period in respect of which copyright(~~s~~) shall subsist beyond twenty-eight years from the date that the copyright(~~s~~) in said work(~~s~~) shall have first subsisted.

In Witness Whereof, the undersigned has executed this instrument this 25th day of November 1939.

JOE GOODWIN (L. S.) [49]

EXHIBIT E

METRO-GOLDWYN-MAYER PICTURES

Distributed by Loew's Incorporated

Loew Building—1540 Broadway

New York

May 2, 1941

Mr. Abe Olman
Feist Music Company
50th & Broadway
New York City.

Dear Abe:

This is to confirm the following quotations which you granted me for the use of the composition "That's How I Need You" by Piantadosi, in the picture "Waterfront".

On May 1st, nine hundred dollars (\$900.) for unlimited use.

On May 2nd, one hundred eighty-seven dollars (\$187.) each visual vocal use, and thirty seven dollars and fifty cents (\$37.50) for each background instrumental use.

Very truly yours,

FRED RAPHAEL. [50]

EXHIBIT F

METRO-GOLDWYN-MAYER PICTURES

Distributed by Loew's Incorporated

Loew Building—1540 Broadway

New York

July 3, 1941.

Mr. Abe Olman

Robbins Music Company

799 Seventh Avenue

New York, N. Y.

Dear Abe:

Recently we received quotations from you, as follows, in connection with the use of the composition "That's How I Need You", in our picture "Waterfront":

Instrumental nonvisual partial.....\$37.50

Visual vocal partial.....187.00

The Studio has made six (6) uses of this number—three (3) instrumental nonvisual partial, and three (3) visual vocal partial. These uses total \$673.50.

In view of the number of uses made, is there any way we can get a reduction on the visual vocal?

Very truly yours,

FRED RAPHAEL. [51]

EXHIBIT G

LEO FEIST, INC.

Music Publishers

1629 Broadway, New York, N. Y.

Circle 6.2939. Cable. Feistel

July 16, 1941

Mr. Fred Raphael

Loew's Incorporated

1540 Broadway

New York, N. Y.

Dear Fred:

Answering yours of July 3rd concerning the use of "That's How I Need You" in the M-G-M picture "Waterfront", in view of the six uses made in this film, we will reduce the quotation to:

visual vocal partial	\$137.50 per use
partial background inst.	34.38 per use

This makes a total of \$515.64 for three of each type uses, of which we will pay \$375.00 to the writers and \$140.64 to the foreign publisher.

I trust this will be satisfactory.

Kindest regards.

Sincerely yours,

LEO FEIST, INC.

(Signed) ABE OLMAN. [52]

EXHIBIT H

METRO-GOLDWYN-MAYER PICTURES

Distributed by Loew's Incorporated

Loew Building—1540 Broadway

New York

July 21, 1941

Mr. Abe Olman

Feist Music Company

1629 Broadway

New York City

Re: Payment due on feature "Barnacle Bill" formerly entitled "The Waterfront"

Dear Abe:

In accordance with permission granted us by you on May 2nd, 1941 and July 16, 1941 we are herewith enclosing our check as follows:

3 instrumental partial nonvisual uses @

\$34.38\$103.14

3 visual vocal partial uses @ \$137.50..... 412.50

Composition: "That's How I Need You" by

Piantadosi, Amount: \$515.64 for World

Rights.

Kindly acknowledge receipt of this payment for the writers and foreign publisher.

Very truly yours,

FRED RAPHAEL.

EXHIBIT I

LEO FEIST, INC.

Music Publishers

1629 Broadway, New York, N. Y.

Circle 6.2939. Cable. Feistel

August 5, 1941

Mr. Fred Raphael

Loew's Inc.

1540 Broadway

New York, N. Y.

Dear Sir:

We acknowledge receipt of your check, in the amount of \$515.64, covering

3 instrumental partial nonvisual uses @ \$34.38.

3 visual vocal partial uses @ \$137.50.

of the composition "That's How I Need You"
by Piantadosi, used in the production "The
Waterfront".

Amount:\$515.64 for World Rights

Very truly yours,

LEO FEIST, INC.

(Signed) PAUL VRABLIC.

PV:MA

[Endorsed]: Filed Jun. 16, 1942. [54]

[Title of District Court and Cause.]

AFFIDAVIT OF AL PIANTADOSI AGAINST
MOTION FOR SUMMARY JUDGMENT

State of California,
County of Los Angeles—ss.

Al Piantadosi, being duly sworn, deposes and says:

That I am the plaintiff in this action and competent as a witness, and if sworn could and would testify as a witness in the manner following.

That about the year 1909, I entered into a contract with Leo Feist and I do not have a copy of said contract. From my memory of its contents, I deny that the terms of the written contract between myself and Leo Feist were similar to a purported copy of such contract referred to in the Answers to Interrogatories in this case and copy of which alleged contract has heretofore been given to my attorney, and I deny that the terms of any such contract made the said Feist the proprietor of said musical composition 'That's How I Need You, or any part thereof, or that the said musical composition, or any part thereof was made by me for hire, and, or, for said Leo Feist as an employer. I deny that said contract in any way concerned any synchronization rights to said musical composition as such an art was unknown in the year 1909; and I deny that said contract granted to said Feist [55] the right to copyright said musical composition, or any part thereof, except as Trustee for myself. I

deny that said contract granted to said Feist any rights at all under or in any renewal copyright, or the right to renew the same in my name, or at all; and deny that said contract granted Feist any renewal rights in said copyright so far as it concerns any synchronization rights.

That said Leo Feist filed an application for copyright on said musical composition during May 1912 and that he received a certificate from the copyright office set out in the affidavit of Olman herein marked Exhibit A.

That some time prior to May 22, 1939, Leo Feist, Inc. filed some form of application with the Registrar of Copyrights, concerning said musical composition and received from the said Registrar of Copyrights a certificate in the form attached to the Olman affidavit, marked Exhibit B, and deny that said Feist had any right to make said application.

That I know of my own knowledge that the documents attached to the Olman affidavit, marked Exhibits C and D and purporting to be signed by Joe Goodwin and Joe McCarthy on November 25, 1939 were not executed on that date, and that the consideration therefor was not paid on such date, but that the same were executed on the 18th and 28th day of September, 1936, the dates when other contracts were made with said McCarthy and Goodwin as appear from Exhibits 3 and 4 to the Answers to Interrogatories herein. That said McCarthy and Goodwin are both at present outside the State of

California and have been so since the Notice of Motion for Summary Judgment has been served herein and I am therefore unable to obtain affidavits from them as to these facts.

That my knowledge of when the said contracts were executed comes to me from conversations had with said McCarthy and Goodwin at various times and from information given to me by letters from Leo Feist, Inc., set out in Exhibit "A", Page 14, Page 12, Page 9, Page 11, thereof, and from a letter received from said McCarthy under date of March 23, 1942 wherein he said, among other things, "I re-signed my copyrights with Feist about five years ago." This letter was in response to one of my own to McCarthy inquiring as to exact date of his conveyance of copyrights to Leo Feist, Inc.

That I deny that Joe McCarthy and Joe Goodwin, either separately or [56] together ever made application for or obtained a renewal of the copyright on the musical composition That's How I Need You, or any part thereof.

That during the year 1936 and continuing until June, 1938, Leo Feist, Inc. through Abe Olman and other officers, and myself, had negotiations concerning the proposed acquisition by Leo Feist, Inc. of the renewal copyrights on the said musical composition and others of my compositions, and that said negotiations were almost entirely by correspondence and I attach hereto copies of all such correspondence, marked Exhibit "A" and made a part hereof.

That during said negotiations said Leo Feist, Inc. submitted to me a proposed contract which I did not execute, and attached hereto is a copy of the same, marked Exhibit "B" and made a part hereof.

That during the early part of January 1942, I received from Leo Feist, Inc. a "Statement of Royalties" dated December 31, 1941 and attached hereto is a photostatic copy of same, marked Exhibit "C" and made a part hereof.

That upon receipt of same I gave said Statement to my attorney, Mr. J. M. Danziger, and he wrote to said Leo Feist, Inc. under date of February 26, 1942, Mar. 16, 1942 and March 25, 1942, and he received letters from Leo Feist, Inc. under date of March 10, 1942 and March 20, 1942, copies of which are hereto attached marked Exhibit "D" and made a part hereof.

That I deny that Leo Feist, Inc. have at any time licensed to defendant Loew's Incorporated, the said musical composition That's How I Need You, or the right to use the same or any part thereof; or of any of my rights in the same, or any part thereof. That Loew's Incorporated were notified by letter of the infringement herein referred to on July 25, 1941.

That the infringement by defendants of the copyright of said musical composition That's How I Need You, took place before May 1, 1941, by the manufacture and public exhibition and sale of the use of the film "Barnacle Bill", such manufac-

ture, sale and public exhibition taking place during the months preceding May, 1941.

AL PIANTADOSI.

Subscribed and sworn to before me this 30th day of June, 1942.

[Seal]

H. A. ANDREWS,

Notary Public in and for said
County and State. [57]

* * * * *

EXHIBIT "C"

Leo Feist Inc.

1629 Broadway : New York

STATEMENT OF ROYALTIES

To December 31, 1941

Al Piantadosi

Title	Net Sales	Net Returns	Royalty Rate	Total Royalties
Curse of an Aching Heart.....	43			
Curse of an Aching Heart—				
Orch.	5			
On the Shores of Italy.....	1			
	—			
	49		1½¢	.74
I've Lost All My Love for You..	3		½¢	.02
Pal of My Cradle Days.....	21		2¼¢	.47
People Like Us.....	2			
That's How I Need You.....	42			
	—			
	44		1¢	.44
I Didn't Raise My Boy to Be a				
Soldier	18		2¢	.36
				—
				2.03
				2.03

Mechanical Royalties as per Statement Attached.....	4.12
Synchronization“ “ “ “ “	158.33
Foreign “ “ “ “ “ .....	.18
Electrical Trans.“ “ “ “ “ .....	.02
	<hr/>
	164.68
Balance Our Favor as per Statement Previously Ren- dered	1,395.07-
	<hr/>
	Balance Our Favor....1,230.39-
South American Performing Fees as per Statement At- tached .....	.13
	<hr/>
	Balance Our Favor....1,230.26-
[Stamped] : H. J. & M. H. Behrman Co. New York City.	
	[58]

Leo Feist Inc.

1629 Broadway : New York

ROYALTY STATEMENT FROM MECHANICAL
AND OTHER INCOME

To December 31, 1941

Al Piantadosi

Records	8 1/3% Curse of Aching Heart	23 1/3% Pal of Days	8 1/3% That's How I Need	Total
American				
Brunswick .....	.87			
Columbia	1.97			
Compo	2.57			
Decca	30.10		1.87	
Sparton				
United States				
Victor	12.06			
Victor—Canada				
Rolls				
Aeolian				

Loew's Incorporated

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	8 1/3% Curse of Aching Heart	23 1/3% Pal of Days	8 1/3% That's How I Need	Total
Rolls				
Imperial				
Wurlitzer				
Mech.				
Amount Rec'd.	47.57		1.87	
Your Share	3.96		.16	4.12
Synchro.				
Amount Rec'd.	400.00		1500.00	
Your Share	33.33		125.00	158.33
Foreign				
Amount Rec'd. ....	.76	.50		
Your Share .....	.06	.12		.18
Elect. Trans.				
Amount Rec'd. ....			.23	
Your Share .....			.02	.02
				[59]

EXHIBIT D

February 26, 1942

Leo Feist, Inc.,
1629 Broadway,
New York City,

Gentlemen:

I am representing Mr. Al Piantadosi in his matters with your firm. He is in receipt of your audited statement of royalties for the period ending December 31, 1941. On that statement you have an item showing the receipt by you of the sum of \$1500 covering Synchro. of song "That's How I Need You." Would you be good enough to inform him or myself of the details of this item.

Thanking you in advance for your favor, I am

Very truly yours,

(Signed) J. M. DANZIGER.

JMD/D

LEO FEIST, INC.

Music Publishers

1629 Broadway, New York, N. Y.

Circle 6-2939. Cable—Feistel

March 10, 1942

Mr. J. M. Danziger
408 South Spring Street
Los Angeles, California

Dear Sir:

We are in receipt of your communication of February 26th on behalf of your client Al Piantadosi. We beg to advise you that the item of \$1500. to which you refer was for the synchronization of the musical composition entitled "That's How I Need You" in the motion picture production of Metro-Goldwyn-Mayer entitled "Barnacle Bill".

Yours very truly,

LEO FEIST, INC.

(Signed) ABE OLMAN.

March 16, 1942

Leo Feist, Inc.,
1629 Broadway
New York, N. Y.
Attention: Mr. Abe Olman

Dear Mr. Olman:

Thank you for your letter of March 10th in reply to mine of February 26th with relation to accounting to Al Piantadosi. Would you be good enough to advise me the date when the \$1500 item to which you refer was received?

Thanking you in advance for your favor, I am

Very truly yours,

(Signed) J. M. DANZIGER.

JMD:S

LEO FEIST, INC.

Music Publishers

1629 Broadway, New York, N. Y.

Circle 6-2939. Cable—Feistel.

March 20, 1942

J. M. Danziger, Esq.,
408 South Spring Street,
Los Angeles, California.

Dear Sir:

In response to your communication of March 16th, this is to advise you that the moneys disbursed by us for said synchronization use were received by us on July 29, 1941.

Very truly yours,

LEO FEIST, INC.

By (Signed) ABE OLMAN.

AO:cb

March 25, 1942

Leo Feist, Inc.,
1629 Broadway
New York, N. Y.
Attention: Mr. Abe Olman

Gentlemen:

Thank you for your letter of March 20, 1942 in response to mine of March 16, [61] 1942, concerning the account with Mr. Al Piantadosi.

Please take note that Mr. Piantadosi does in no way ratify or confirm your activities with relation to the various copyrighted musical compositions on which he claims to own copyrights and of which you assert to be the owner.

Very truly yours,

(Signed) J. M. DANZIGER,

In behalf of Al Piantadosi.

JMD:S

[Endorsed]: Filed Jul. 2, 1942. [62]

[Title of District Court and Cause.]

AFFIDAVIT OF KATHERINE KINSCH IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

State of New York,
County of New York—ss.

Katherine Kinsch, being duly sworn, deposes and says:

I am over the age of 21 years and in full possession of all my faculties. I have personal knowledge of all the facts herein stated.

I am, and since in or about the year 1932 I have been, the manager of the Copyright Department of the defendant Leo Feist, Inc., a corporation.

That on or about November 25, 1939, Joe McCarthy, a co-writer of the musical composition entitled 'That's How I Need You, executed and delivered to me for and on behalf of said Leo Feist, Inc. a written assignment of all his rights whatsoever in and to said musical composition under the re- [63] newal and extension of the copyright obtained by him therein as one of the co-authors thereof and for and during the period of said renewal and extension of copyright therein. A true, correct and complete photostat copy of said assignment is attached hereto, marked Exhibit A, and by this reference incorporated herein as though fully set forth. I am familiar with the signature of said Joe McCarthy appearing on the original assignment, which signature is in fact the signature of

said Joe McCarthy. That said assignment was executed by said Joe McCarthy in my presence and in the presence of Dorothy McCarthy, the wife of said Joe McCarthy, in apartment 7A, premises 135 West 58th Street, in the Borough of Manhattan, City, County and State of New York, which I was then informed by said Joe McCarthy was his then place of residence. That said assignment was executed by said Joe McCarthy subsequent to May 22, 1939, the date that the said Joe McCarthy obtained said renewal and extension of the copyright in said musical composition.

KATHERINE KINSCH.

Subscribed and sworn to before me this 22nd day of June, 1942.

[Seal] EDWIN A. STARN,

Notary Public in and for the County of New York,
State of New York. Notary Public, New York
County. N. Y. Co. Clk's No. 337, Reg. No. 3-S-
288. Term Expires March 30, 1943.

* * * * *

[Endorsed]: Filed Jun. 27, 1942. [64]

[Title of District Court and Cause.]

AFFIDAVIT OF JOE McCARTHY IN SUP-
PORT OF MOTION FOR SUMMARY
JUDGMENT

State of New York,
County of Warren—ss.

Joe McCarthy, being duly sworn, deposes and says:

I am over the age of 21 years and in full possession of all my faculties. I have personal knowledge of all the facts herein stated.

I am a co-writer of the musical composition entitled *That's How I Need You*.

On May 22, 1939, within one year prior to the expiration of the original term of the copyright in said musical composition, I obtained a renewal and extension of the copyright therein as one of the co-writers thereof.

That on or about November 25, 1939, I executed and delivered to Katherine Kinsch, manager of the Copyright [65] Department of the defendant Leo Feist, Inc., for and on its behalf, a written assignment of all my rights whatsoever in and to said musical composition under said renewal and extension of the copyright obtained by me therein as one of the co-writers thereof and for and during the period of said renewal and extension of said copyright therein. A true, correct and complete photostat copy of said assignment is attached hereto, marked Exhibit A, and by this reference incorpo-

rated herein as though fully set forth. That my signature appears on the original assignment. That said assignment was executed by me in the presence of said Katherine Kinsch and in the presence of Dorothy McCarthy, my wife, in apartment 7A, premises 135 West 58th Street, in the Borough of Manhattan, City, County and State of New York, which was then occupied by my wife and myself as our place of residence. That said assignment was executed by me subsequent to May 22, 1939, the date that I obtained said renewal and extension of copyright in said musical composition.

JOSEPH McCARTHY.

Subscribed and sworn to before me this 23rd day of June, 1942.

[Seal] HAMILTON H. TRAVER,
Notary Public, Warren Co. N. Y. Certificate filed
in Saratoga Co. Commission expires, March 30,
1944.

* * * * *

[Endorsed]: Filed Jun. 27, 1942. [66]

[Title of District Court and Cause.]

AFFIDAVIT OF DOROTHY McCARTHY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

State of New York,
County of Warren—ss.

Dorothy McCarthy, being duly sworn, deposes and says:

I am over the age of 21 years and in full possession of all my faculties. I have personal knowledge of all the facts herein stated.

I am, and for some time prior to November 25, 1939 I was, the wife of Joe McCarthy, one of the co-writers of the musical composition entitled *That's How I Need You*.

That on or about November 25, 1939, said Joe McCarthy executed and delivered to Katherine Kinsch, the manager of the Copyright Department of Leo Feist, Inc., for and on its behalf, a written assignment of all his rights [67] whatsoever in and to said musical composition under the renewal and extension of the copyright obtained by him therein as one of the co-authors thereof and for and during the period of said renewal and extension of copyright therein. A true, correct and complete photostat copy of said assignment is attached hereto, marked Exhibit A, and by this reference incorporated herein as though fully set forth. I am familiar with the signature of said Joe McCarthy appearing on the original assignment, which signa-

ture is in fact the signature of said Joe McCarthy. That said assignment was executed by said Joe McCarthy in my presence and in the presence of said Katherine Kinsch, in apartment 7A, premises 135 West 58th Street, in the Borough of Manhattan, City, County and State of New York, which was the then place of residence of said Joe McCarthy and myself. That said assignment was executed by said Joe McCarthy subsequent to May 22, 1939, the date that the said Joe McCarthy obtained said renewal and extension of the copyright in said musical composition.

DOROTHY McCARTHY.

Subscribed and sworn to before me this 23rd day of June, 1942.

[Seal] HAMILTON H. TRAVER,
Notary Public, Warren Co., N. Y. Certificate filed
in Saratoga Co. Commission expires, March 30,
1944.

* * * * *

[Endorsed]: Filed Jun. 27, 1942. [68]

[Title of District Court and Cause.]

COUNTER-AFFIDAVIT OF
HERMAN F. SELVIN

State of California,
County of Los Angeles—ss.

Herman F. Selvin, being first duly sworn, deposes and says:

I am a member of the firm of Messrs. Loeb and Loeb, attorneys for defendants Loew's Incorporated and Metro-Goldwyn-Mayer Corporation herein.

In the first amended complaint on file herein plaintiff alleges that on or about June 1, 1939 he applied for a renewal of the subsisting copyright in the musical composition "That's How I Need You" and that the renewal copyright was issued to him on or about that date. He further alleges that ever since June 1, 1939 he has been the owner jointly with his co-authors of the renewal copyright in and to said musical composition. [69]

Attached hereto and marked Exhibit A is a certified copy of the application for renewal of said copyright filed by plaintiff on June 1, 1939. As appears from said renewal application the authors of said musical composition, on whose behalf said renewal was requested, were Joe McCarthy, Joe Goodwin and Al Piantadosi.

HERMAN F. SELVIN.

Subscribed and sworn to before me this 3d day of July, 1942.

[Seal]

ELLOWENE EVANS,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Jul. 3, 1942. [70]

APPLICATION FOR THE RENEWAL OF A COPYRIGHT SUBSISTING IN ANY WORK

REGISTER OF COPYRIGHTS, Washington, D. C.

Application is hereby made within this last year of the copyright now subsisting in the work hereinbelow described (in accordance with the provisions of section 23 of the Act of March 4, 1909), for the renewal of the copyright for the renewal term of 28 years from the date when the said copyright will expire. \$1 (statutory fee) is also enclosed.

(1) The renewal copyright is claimed by me, on, as Author
(Author, widow, widower, child—SEE OVER)

(2) Name of renewal owner Al Piantadosi
(Give full legal name of renewal owner)

(3) Address 5116 Zelzah Ave., Redwood, Cal.
(Street) (City) (State)

(4) Title of work That's How I Need You
(Give address of each claimant)

(5) Name of author of renewable matter Lyric - Joe McCarthy & Joe Goodwin
Music - Al Piantadosi
(Give name in full)

R¹Application for renewal received
JUN - 1 1939

CO. R 75877-2

Fee rec'd \$

35162 JUN-2 39

IMPORTANT.—Applicant must not write in the blank lines above to do so will cause delay in Copyright Office.

(6) Original registration: Class C No. 284725 Date of publication May 16, 1912

(7) If unpublished work, give date of original registration _____, 19____

(8) Name of original claimant Leo Feist, Inc., N.Y.

(9) Send certificate of registration to Gillian Lange, 70 S.P.A.

1250 - 6th Ave., N.Y.
(Street) (City) (State)

(10) Name and address of person or firm sending the fee Gillian Lange

1250 - 6th Ave., N.Y.
(Street) (City) (State)

16-2973

71

[Please turn this over]

Application must be filed in the Copyright Office within the 28th year of the original term

Form 13

REGISTRATIONS FOR RENEWAL OF COPYRIGHTS CAN ONLY BE MADE DURING THE LAST YEAR OF THE EXISTING TERM

DIRECTIONS

*When the author is living and application is made by or for him, the words "the author" should be inserted in the blank at (1) left for that purpose after the words "copyright is claimed by me, us, as".

If the author is not living and application is made by

- (a) the widow or widower, then the words "the widow of the author" or "the widower of the author" should be inserted.
- (b) the child or children of the deceased author, then the words "the child of the deceased author" or "the children of the deceased author" should be inserted.
- (c) the executors of the will of the author, then the words "the executors of the author" should be inserted.
- (d) the next of kin of the author, then the words "the next of kin of the author, who is not living, there being no will", should be inserted.

USE A SEPARATE BLANK FOR EACH TITLE

Renewal registration may be made by the proprietor only under the following conditions, and in such cases the form of claim (to be given in space (1) of the renewal application) MUST be substantially in the form shown below:

1. If the work is posthumous or composite and if the copyright has been secured originally by the proprietor thereof, the present proprietor may renew as
 - (a) "Proprietor of the posthumous work";
 - (b) "Proprietor of the composite work."
2. If the work has been copyrighted by a corporate body otherwise than as assignee or licensee of the individual author, the proprietor may renew as
 "Proprietor of a work copyrighted by a corporate body otherwise than as assignee or licensee of the author."
3. If the work had been copyrighted by the employer for whom such work was made for hire, the proprietor may renew as
 "Proprietor of copyright in a work made for hire."

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA
WASHINGTON, D. C.

I hereby certify that the foregoing is a true copy of the Application as
same was received in this Office on the first day of June 1937,
the registration of the ^{Revised} Musical Composition Bluebird No. 24725 (Renewal No. 75177)
titled That's How I Need You.

and in the name of Al Santandori,
5116 Gough Ave., Pasadena, Calif. copyright claimant.
a witness whereof, the seal of this Office has been hereto affixed this ninth
June 1941.

D. K. Rowe
Register of Copyrights

[Title of District Court and Cause.]

AFFIDAVIT OF J. M. DANZIGER IN RE MO-
TION OF DEFENDANTS FOR SUMMARY
JUDGMENT

State of California,
County of Los Angeles—ss.

J. M. Danziger, first being duly sworn, deposes
and says:

That I am the attorney for the plaintiff in this
action.

That I have in my possession carbon copy of a
letter dated March 17, 1942 from Al Piantadosi
to Joe McCarthy, copy of which is hereto attached
and made a part hereof.

That I have in my possession the original of a let-
ter from Joe McCarthy to Al Piantadosi, dated
March 23, 1942, copy of which is hereto attached
and made a part hereof.

That the attached are full, true and correct cop-
ies of the above letters.

That the letter from McCarthy to Piantadosi is
the one which is partially quoted from in the affi-
davit of Al Piantadosi herein.

J. M. DANZIGER.

Subscribed and sworn to before me this 10th
day of July, 1941.

[Seal]

ANNE M. MOORE,

Notary Public in and for said
County and State. [73]

March 17, 1942

Mr. Joe McCarthy
c/o A.S.C.A.P.
30 Rockefeller Plaza
New York, N. Y.

My dear Joe:

As you know, I have brought a suit for infringement against Metro-Goldwyn-Mayer and Loew's for using our song "That's How I Need You" without right. This is a very important suit and if we win, it will amount to some real money.

Metro-Goldwyn-Mayer in their answer in this suit claim that both before the renewal of the copyright and after the renewal of the copyright, they made two separate contracts with you and Goodwin whereby they acquired outright all of your interest in this song and also, all of your interest in the renewal copyright. The renewal took place June 1, 1939. Will you please write me so that I can show it to my attorney and tell me whether you have ever made such contracts. I know that you made some kind of a contract under the old copyright some time prior to 1939. If you have a copy of the contract that you made at that time, it would be very helpful if you could send it to me. Or if you remember the terms of the contract, particularly whether it included motion picture rights, I would like to know this, but particularly and above all, did you make any kind of a contract after June 1, 1939, and if so, I would like to get a copy. If per-

chance you have any letters from Feist at any time on this subject and could spare them long enough for me to make copies, I would be glad also to have them.

Of course, you know that if I win this case, it means a lot to you, also.

Very truly yours,

(Signed)

AL PIANTADOSI,

5116 Zelzah Avenue, Tarzana,
California. [74]

March 23, 1942.

135 West 58th St., N.Y.C.

Dear Al:

Yours just received and hasten to reply. I resigned my copyright with Feist about five years ago—That contract is in my vault at my summer place, Hadley, N. Y., over two hundred miles from here.

If you held and renewed your own contract, as I did on "You Made Me Love You", I believe you can collect a few thousand dollars if Metro used "Need You" without your consent. In my agreement with Robbins I had to give my consent for all available rights. I do not recall the exact price—It was about the same as all popular songs receive. My object was to keep all my copyrights alive and active—I think I received about seven thousand dollars advance for my entire catalogue—including all shows "Irene""Rio-Rita" etc—I read where you were suing Metro for a goodly sum—If you never

were consulted—never sold out—never agreed to Metro using your melody—and I'll swear it is your melody—you should be paid what you think is fair.

I cannot receive anything that my signed contract does not call for.

If I can help you honestly I will be glad to do so—I always want to see the writer paid for his work—I repeat I believe you have a case independent of me—All the luck in the world to you and keep your good health—I've got a bad ticker and it's been acting up.

Please give my best to your family and to Arthur and his—

Yours as always,

(Signed) JOE McCARTHY.

[Endorsed]: Filed Jul. 10, 1942. [75]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Saturday the 18th day of July in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable: Leon R. Yankwich, District Judge.

No. 2027-B-Civil

[Title of Cause.]

The motion of the defendant Loew's Incorpo-

rated, a corporation, filed June 16, 1942, for summary judgment in its favor, heretofore heard and submitted, is now decided as follows:

The said motion is hereby granted.

The Court is of the view that the pleadings on file, the affidavits filed in support of the motion, and those in opposition to it, clearly show that there is no genuine issue as to any material fact as to the defendant Loew's Incorporated, a corporation, and that this defendant is entitled to a judgment in its favor as a matter of law. Such judgment is ordered.

Formal Summary Judgment of Dismissal to follow. [76]

In the District Court of the United States
Southern District of California
Central Division

No. 2027-Y Civil

AL PIANTADOSI,

Plaintiff,

vs.

LOEW'S INCORPORATED, a corporation, et al.,
Defendants.

JUDGMENT OF DISMISSAL

This matter came on regularly to be heard on July 6, 1942, upon the motion of defendant Loew's

Incorporated for a summary judgment. Plaintiff appeared by J. M. Danziger, Esq., his attorney of record, and defendant Loew's Incorporated appeared by its attorneys, Messrs. Loeb and Loeb by Herman F. Selvin.

Said motion was duly argued and the court having concluded that the pleadings, depositions and admissions on file, together with the affidavits of the respective parties, show that no genuine issue as to any material fact exists and that said defendant is entitled to a judgment as a matter of law, Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing of or from defendant Loew's Incorporated; [77] and that said defendant have and recover of and from plaintiff its costs incurred herein, which said costs are hereby taxed in the sum of \$20.00; and in addition thereto the sum of \$500.00 as attorneys' fees.

Dated: July 24th, 1942.

LEON R. YANKWICH

District Judge

Approved as to form as provided in Rule 8.

.....

Attorney for plaintiff

[Endorsed]: Filed Jul. 24, 1942. [78]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above Named Court:

Notice Is Hereby Given, That Al Piantadosi, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action in favor of defendant Loew's Incorporated, on July 24, 1942, in Civil Order Book No. 10 at page 439.

J. M. DANZIGER

Attorney for Appellant Al
Piantadosi

Suite 1400 Continental
Building

Los Angeles, California

Dated: October 20, 1942.

Copy mailed to Messrs. Loeb & Loeb, Attys. for deft. Loew's Inc. 10-21-42. Edmund L. Smith, Clerk by R. B. Clifton, Deputy.

[Endorsed]: Filed Oct. 21, 1942. [79]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 84, inclusive, contain

full, true and correct copies of First Amended Complaint Copyright Infringement; Answer of Defendants Loew's Incorporated and Metro-Goldwyn-Mayer Corporation to First Amended Complaint; Interrogatories to be Answered by Defendants Loew's Incorporated and Metro-Goldwyn-Mayer Corporation; Answers to Interrogatories Propounded by Plaintiff; except the pages following page 4 of Exhibits 5 and 6; Notice of Motion for Summary Judgment in Favor of Defendants; Affidavit of Abe Olman in Support of Motion for Summary Judgment; Affidavit of Al Piantadosi Against Motion for Summary Judgment; Affidavit of Katherine Kinsch in Support of Motion for Summary Judgment; Affidavit of Joe McCarthy in Support of Motion for Summary Judgment; Affidavit of Dorothy McCarthy in Support of Motion for Summary Judgment; Counter-Affidavit of Herman F. Selvin; Affidavit of J. M. Danziger in re. Motion of Defendants for Summary Judgment; Minute Order Entered July 18, 1942; Judgment of Dismissal; Notice of Appeal; Supersedeas-Cost Bond on Appeal and Stipulation re. Matters to be Included in Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$12.75 which amount has been paid to me by Appellant.

Witness my hand and the seal of the said District Court this 23 day of November, A. D. 1942.

[Seal] EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk.

[Endorsed]: No. 10314. United States Circuit Court of Appeals for the Ninth Circuit. Al Piantadosi, Appellant, vs. Loew's Incorporated, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 24, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals,
Ninth Circuit

No. 10314

AL PIANTADOSI,

Appellant,

vs.

LOEW'S, INCORPORATED,

Respondent.

STATEMENT OF POINTS ON WHICH AP-
PELLANT RELIES AND RECORD TO BE
PRINTED

STATEMENT OF POINTS ON WHICH
APPELLANT WILL RELY

Comes now the Appellant in the above-entitled case, and files the following statement of points on which he intends to rely on this appeal.

(1) The Court erred in granting Summary Judgment for defendant Loew's, Incorporated upon the pleadings and file in this action.

(2) The Court erred in allowing the sum of Five Hundred Dollars as fee for attorneys representing Loew's, Incorporated, in this case.

APPELLANT'S STATEMENT OF RECORD
TO BE PRINTED

Appellant further states that only the following parts of the record as filed in this Court, are

deemed necessary to be printed for the consideration of the points set forth above, viz.:

All of the record shown in the Stipulation Re Matters To Be Included On Appeal, on file herein, except the Stipulation itself and Captions and formal parts of the documents set forth in said record.

Dated: November 25, 1942.

J. M. DANZIGER,

Attorney for Appellant.

Received copy of the within Statement of Points, etc., this 27 day of November, 1942.

LOEB AND LOEB

By (Illegible)

Attorneys for Respondent

[Endorsed]: Filed Nov. 30, 1942.

